

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200833005**

Release Date: 8/15/2008

Index Number: 9100.00-00, 1361.05-00

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-104326-08

Date:  
April 25, 2008

### Legend

X =

Sub =

State =

D1 =

D2 =

Dear :

This responds to your letter dated January 23, 2008, submitted on behalf of X, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to elect to treat Sub as a qualified subchapter S subsidiary (QSub) for federal tax purposes.

### FACTS

According to the information submitted, X was incorporated under the laws of State and made an election to be treated as an S corporation effective D1. On D2, X acquired all of the stock of Sub, which was an S corporation. X intended to file an election to treat Sub as a QSub effective D2; however, X inadvertently failed to timely file the proper election.

LAW AND ANALYSIS

Section 1362(a) of the Internal Revenue Code provides that a small business corporation may elect to be an S corporation.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the election form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term regulatory election as including an election with a deadline prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that request for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to file a Form 8869 for Sub to elect to treat it as a QSub effective D2. A copy of this letter should be attached to the election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Sub is a valid QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes